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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 09/842,028
Filing Date: April 26, 2001
Appellant(s): BLACK, PHILLIP JOHN

MAILED

JUN 17 2003

GROUP 3600

Black
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 5, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-4 and 7-19 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,577,417	Fournier	11-1996
6,152,676	Evert et al.	11-2000
5,350,891	Ditzig	09-1994

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 7-9, and 18 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 5.

Claims 10-13 and 19 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 5.

Claim 14 is rejected under 35 U.S.C. 102(e). This rejection is set forth in prior Office Action, Paper No. 5.

Claims 14-17 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 5.

(11) Response to Argument

“I. Claims 1-4, 7-9, and 18 are not unpatentable under 35 USC 102(b) over Fournier.”

In response to the appellant's argument that Fournier fails to show the fixed base portion as recited in claim 1, it is the Examiner's view that Fournier shows the fixed base portion as recited in claim 1. The word “fixed”, provided by Merriam Webster's Collegiate Dictionary, 10th Edition, is defined as being “securely placed or fastened”. Certainly, the base portion 12, shown in Figs. 2 and 3, of Fournier is “fixed” or “securely placed or fastened” to either the cable 22 itself or to the machine 20 via the cable 22.

In response to the appellant's argument that claim terms must be interpreted in the context with reference to the specification, it is the Examiner's view that the claim terms does not always have to be interpreted in the context with reference to the specification. Rather, as

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explained in MPEP 2111, claims must be given their broadest reasonable interpretation. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969); *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). The court, *in re Prater*, explained that “reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from ‘reading limitations of the specification into a claim,’ to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim.” Furthermore, the court, *in re Morris*, explained that the “PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant’s specification.” Therefore, the broadest reasonable interpretation of the word “fixed” can include the meaning of “securely placed or fastened”.

In response to the appellant’s argument that Fournier fails to show the fixed base portion that is fixed in a manner that allows the operator to resist effects of external forces as recited in claim 1, it is noted that, in claim 1 lines 5-6, the fixed base portion with the movable upper portion “define means for an operator to resist effects of external forces” and not just the fixed base portion only. In other words, it is required in the claim that two elements, not one element as the appellant argues, are needed to define the means for resisting external forces. In this case, it is important that one of ordinary skill in the art to consider the two elements, as a whole, that support the definition rather than just one because by having two elements, the movable upper portion and the fixed base portion together, would create an environment for a hand to resist effects of external forces such as sudden jerks or vibrations. Such resistance can be practiced by

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stiffening the entire hand wherein the palm is held against the base portion 12 while the fingers (thumb and index) are pressed on the movable upper portion on the opposite sides. However, if only the fixed base portion defines the means to resist effects of external forces, than such means become meaningless in the invention because it is the moveable upper portion that needs to be prevented from unwanted movement.

In response to the appellant's argument, on page 7, lines 9-19, that the Examiner provided "a clear mischaracterization of the terms used in the claims as well as an inaccurate representation of the Fournier patent", it is the Examiner's contention that there is neither mischaracterization of the terms nor inaccurate representation of the Fournier patent. It is inherent in nature that there are external forces that can be exerted on the grip control device of Fournier. Such external forces can be sudden jerks either created by the operator himself or by others bumping into the operator, or an excessive vibration caused by the machine that the grip control device is connected to. Fournier patent does not describe that the grip control device is designed to prevent external forces from hampering the control of the machine. However, by the nature of the design of the handle, it is inherent for one of ordinary skill in the art to hold the grip control device by the entire hand wherein the palm is held against the base portion 12 while the fingers (thumb and index) are pressed on the movable upper portion on the opposite sides. Thus, it would be easy for the operator to resist the external forces by controlling the stiffness of the hand and the fingers.

Therefore, the Examiner submits that claims 1-4, 7-9, and 18 are not allowable over Fournier.

“II. Claims 10-13 and 19 are not unpatentable under 35 USC 102 (b) over Fournier.”

In response to the appellant's argument that Fournier patent fails to show the fixed base portion, and the fixed base portion and the control portion defining the means to resist external forces, it is the Examiner's position that Fournier does show the fixed base portion broadly interpreted and the fixed base portion and the control portion define the means to resist external forces. The reasons for the Examiner's positions are discussed above and will not be repeated in this paragraph.

Therefore, the Examiner submits that claims 10-13 and 19 are not allowable over Fournier.

“III. Claim 14 is not unpatentable under 35 USC 102(e) over Evert.”

In response to the appellant's argument that Evert fails to show the fixed based portion fixedly secured to the machine frame, it is the Examiner's view that Evert does show the fixed based portion fixedly secured to the machine frame. Appellant argues that since the lever 11 can be pivoted around an axis 12, the based portion can not be considered fixed given the context of the meaning of the word “fixed” is defined as “immovable”. However, the Examiner believes that the lever 11 is fixed to the machine since the word “fixed”, again provided by Merriam Webster's Collegiate Dictionary, 10th Edition, is defined as being “securely placed or fastened”. The base portion 11 is “securely placed or fastened” to the machine via the axis 12. Again, as discussed above, as discussed in MPEP 2111, claims are given their broadest reasonable interpretation. See *In re Prater* and *in re Morris*.

Therefore, the Examiner submits that claim 14 is not allowable over Evert.

“IV. Claims 14-17 are not unpatentable under 35 USC 102(b) over Ditzig.”

In response to the appellant's argument that Ditzig fails to show a structure that provides support for an operator to resist effects of external movements resulting from movement of a machine, it is the Examiner's view that Ditzig shows the machine (in this case the vehicle) comprising a frame (inherent for all the vehicles) a control lever 10 attached the frame, wherein the control lever comprises a fixed base portion 14, 16, 116 fixedly secured to the frame and provide support for an operator to resist the external movements caused by the machine, and a movable upper portion 122 pivotable relative to the fixed base portion, and wherein the movable upper portion and the fixed base portion define a substantially continuous profile. The fixed base portion 14, 16, 116 provides support for an operator to resist effects of external movements resulting from movement of a machine since the operator's hand can be leaned against the fixed base portion 116 while fingers (thumb and index) hold the movable upper portion 122. It would be reasonable to say that one of ordinary skill in the art would stiffen the hand and the fingers so that the movable upper portion does not move relative to the fixed base portion when there is a swerving motion or a vibration caused by the operation of the machine.

In response to the appellant's argument that sharp exterior edges of the fixed base portion can not be adapted to be gripped by the operator, it is noted that claims 14-17 do not recite the fixed base portion being “gripped” by the operator. Claim 14 recites that the “fixed base portion...(provides) support for an operator to resist effects of external movements”. Therefore, Ditzig reference does not have to show that the fixed base portion 14, 16, 116 can be gripped by

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operator. As long as Ditzig shows that the fixed base portion provides "support for an operator to resist effects of external movements", then it meets the USC 102 rejection requirement.

In response to the appellant's argument that there is no substantially continuous profile in Ditzig and that the Examiner has taken the meaning of "profile" out of the context of the present invention, it is the Examiner's contention that Ditzig's device shows the moveable upper portion and the fixed base portion being a substantially continuous profile. The profile, "contour" or "outline" as defined by the Dictionary, of the upper portion and the fixed base portion are neither broken nor discontinued. Hence, the profile of both portions is construed as being substantially continuous. Again, claims are given their broadest reasonable interpretation. See *In re Prater* and *in re Morris*.

Therefore, the Examiner submits that claims 14-17 are not allowable over Ditzig.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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CHK
June 16, 2003

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